IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/02/2004

CORAM

THE HONOURABLE MRS. JUSTICE R.BANUMATHI

CRL.APPEAL No.301 of 1997

1. Ramasamy
2. Pitter @ Ramasamy @
Rangasamy
3. Periarasu @ Palanisamy
4. Sukkuru @ Subramaniam ... Appellants /
5. Sumathi Accused 1 to 5

-Vs-

State by:
Inspector of Police,
Kunnathur. ... Respondent.

Criminal Appeal against the judgment dated 03.04.1997 made in
S.C. No.10 of 1997 on the file of Principal Sessions Judge, Periyar District
at Erode.

!For appellants : Mr.Kaithamalai Kumaran

^For respondent : Mr.A.N.Thambidurai,
Govt. Advocate (Crl. Side)

:J U D G M E N T

Accused 1 to 5 in S.C.No.10 of 1997 on the file of Sessions
Court, Erode are the Appellants. By the judgment dated 03.04.1997, Appellants
/ Accused were convicted for various offences. Aggrieved over the conviction,
Appellants/ Accused 1 to 5 have preferred this appeal.

2. Case of the prosecution could briefly be stated thus:-
Prior Occurrence. P.W.1 - Sendan is the resident of
Motorpalayam and belongs to Schedule Caste Community. He was employed in the
field of one Mani, husband of Sumathi. The said Sumathi and P.W.6 -
Chinnathangam are the daughters of A.4 - Sukkuru @ Subramaniam. P.W.6 is said
to have developed love and friendship with one Palanichamy of Mylampalayam.
On 29.07.1996 - 8.00 a.m., P.W.1 went to 'Kunnathur Santhai' and to return
back to his Village, he was standing near Velampalayam Bus Stop. At that
time, P.W.6 - Chinnathangam standing in the bus stop, called P.W.1 and sought

his help to take her to Palla Goundampalayam. P.W.3 - Selvan and P.W.4-Rangan were also standing there. At that time, there was no bus to Palla Goundampalayam. P.Ws.1 and 3 had taken P.W.6 and made her to stay in the house of Sister of P.W.3 - Selvan. Thereafter, P.Ws.3 and 4 we nt to Ganapathipalayam to inform the same to the parents of P.W.6 (A.4 - Sukkuru @ Subramaniam)

3. Occurrence - 30.07.1996 - 9.00 a.m. A.4 and others found P.W.6 missing. They have questioned P.Ws.3 and 4 about the whereabouts of P.W.6. Thereafter, A.1 to 5 went in search of P.W.6. In a Car, P.W.1 was taken to Uppugoundan Thottam i palayam. Calling him by his Caste and stating " .... ft[z;lg; g[s;isia Tl;og; nghFk; mst[f;F cdf;F jpkpuhfptpl;ljh > " , A.1 to A.5 surrounded P.W.1 and attacked him as stated below:-

A.1 - Ramasamy
---------- : on the chest and abdomen.
Kicked

A.2 - Pitter
---------- : left shoulder
M.O.2 - Spade
handle

A.3 - Periarasu
---------- : on the back side
Cycle Chain

A.4 - Sukkuru
---------- : on the back side.
M.O.2- Clutch wire.

A.5 - Sumathi
---------- : on the left leg and
Crowbar left shoulder.

The occurrence was witnessed by P.W.5 (Perumal) - brother of P.W.1 and Kaliappan - father of P.W.1. According to P.W.1, he was afraid of the Accused and he did not immediately go to the Hospital or to the Police Station to give complaint.

4. Treatment. On 10.08.1996 - 3.20 p.m., P.W.1 was brought to Government Hospital, Erode by P.W.5. P.W.2 - Dr.Ilango gave the initial treatment. He noted the following injuries on the person of P.W.1:-

(i) Multiple abrasions with contusion with scab formation linear of varying size over the entire back.

(ii) Laceration with scab formation with healed would.

(iii) Healed wound with swelling over right middle of forearm.

(iv) Healed wound with scab formation left thigh.

(v) Healed lacerated wound with scab formation and swelling around left shoulder.

(vi) Pain all over the body. (Vide Ex.P.2).

On the admission of P.W.1 into the Hospital, Ex.P.3 - Intimation was sent to the Police.

5. Registration of Case. P.W.7 - Head Constable attached to the Outpost Police Station, Erode Government Hospital received Ex.P.3 - Intimation. He has recorded Ex.P.1 - Complaint from P.W.1 on 10.08.1996 - 5.00 p.m. Ex.P.1 was sent to Kunnathur Police Station. On the basis of Ex.P.1 - Complaint, P.W.8 - Inspector of Police had registered the case in Crime No.217 of 1996 under Ss.147, 148 and 324 I.P.C. and under Sec.3(1)(x) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, herein after referred as SC & ST Act) under Ex.P.4 - First Information Report.

6. Investigation. P.W.8 had taken up investigation. Scene of occurrence - Uppugoundan Thottam in Ganapathypalayam was inspected in the presence of witnesses Murugasamy and Periyasamy. Ex.P.5 - Observation Mahazar and Ex.P.6 - Rough Plan were prepared on the scene of occurrence.

7. Arrest of the Accused. A.2 and A.4 were arrested on 13.08.1996 in Velampalayam Bus Stand. A.4 voluntarily confessed to his guilt. Ex.P.7 - Admissible Portion of his Confession Statement led to the recovery of M.O.1 - Clutch Wire and M.O.2 - Spade Handle, under Ex.P.8 - Seizure Mahazar. A.1 and A.3 were arrested on 02.09.1996 - 9.30 a.m. in Ganapathypalayam near Milk Society and they were remanded to judicial custody. A.5 surrendered before the Court.

8. P.W.9 - Inspector of Police had taken up further investigation. He has obtained Exs.P.9 to P.13 - Community Certificates of A.1 to A.5. As per Exs.P.9 to P.13, A.1 to A.5 belong to Vellala Gounder Community. As per Ex.P.14 - Community Certificate, P.W.1 belongs to Scheduled Caste. On completion of investigation, charge sheet was filed against the Accused on 28.10.1996.

9. To substantiate the charges against the Accused in the trial Court P.Ws.1 to 9 were examined. Exs.P.1 to P.14 were marked and M.Os.1 and 2 were remanded to the Court. Defence is one of total denial and that a false case is foisted against them.

10. Upon consideration of the evidence, the learned Sessions Judge found that the delay in lodging the complaint would not in any way affect the prosecution case. Finding that the unlawful assembly of A.1 to A.5 and the overt act of A.3 and A.5 in beating P.W.1 are well proved, the trial Court convicted the Accused. The trial Court also found that A.1 abused P.W.1 calling him by his Caste with intention to insult him. The details of the charges framed against the Accused and the finding of the trial Court are noted below:-

Charge Number	Gist of the Offence	Against which accused	Finding
(1)	(2)	(3)	(4)
1	Under Sec. 147 IPC Rioting	A1	Convicted under Sec. 147 IPC. RI for one year.
2	Under Sec.148 IPC Rioting armed with deadly weapon.	A2 to A5	A.4 convicted under Sec.147 IPC. RI for one year. A2, A3 and A5 convicted under Sec.148 IPC. RI for Two Years with fine of Rs.1,000/-.
3	Under Sec.3(1)(x) SC and ST (P.A.)Act Intentional insult calling by Caste.	A1 to A5	A.1 convicted under Sec.3(1)(x) SC and ST (P.A.) Act. RI for four years. A2 to A.5 acquitted

(1)
(2)
(3)
(4)

4
Under Sec.323 IPC
Causing simple injury
A1
A.1 Acquitted under Sec.323 IPC.
5
Under Sec.324 IPC
Causing injury to P.W.1 - Sendan with Spade Handle.
A2
A.2 convicted under Sec.324 IPC.
RI for one year and fine of Rs.500/-.
6
Under Sec.324 IPC
Causing injury to P.W.1 with Cycle Chain.
A3

A.3 convicted under Sec.324 IPC.
RI for one year and fine of Rs.500/-.
7
Under Sec.324 IPC
for causing injury to P.W.1 with Clutch Wire.
A4
A4 acquitted.

8
Under Sec.324 IPC for causing injury to P.W.1 with Crowbar.
A5
A5 convicted under Sec.324 IPC.
RI for one year and fine of Rs.500/-.

11. Assailing the prosecution case and the occurrence that it bristles with several infirmities and contradictions onbehalf of the Accused the following contentions are urged:-

(i) Enormous delay of ten days in alleging the complaint remains unexplained;

(ii) Evidence of P.W.1 on the occurrence is not corroborated by the evidence of P.Ws.4 and 5;

(iii) Evidence of P.W.1 is in material variation with evidence of P.Ws.3 and 4;

(iv) Non-examination of mahazar witnesses and independent witnesses is fatal to the prosecution case;

(v) Inspector of Police is not authorised as per Rule 7 of the Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules, 1995 and only Deputy Superintendent of Police is authorised to investigate the offences arising under the Act and that the investigation done by P.Ws.8 and 9 - Inspectors of Police is vitiated.

12. Reiterating the findings of the trial Court, the learned Government Advocate submitted that the reasonings for conviction are well supported by the materials on record. Taking me through the evidence of P.Ws.1 and 5, the learned Government Advocate submitted that the attack and intentional abuses on P.W.1 are well brought out by the consistent evidence of P.Ws.1 and 5. The trial Court rightly convicted the Accused and that there is no reason warranting inteference.

13. Whether the guilt of the Appellants / Accused 1 to 5 is proved beyond reasonable doubts and whether the conviction of the Accused for various offences is sustainable ? is the point that arises for consideration in this appeal.

14. Though the present case is registered under Sec.3(1)(x) of SC and ST Act, it is not like any other cases of aroused communal ill feelings, but seems to be on account of personal rivalry - intimacy of P.W.6 - Chinnathangam either with Palanisamy or with P.W.1, the details of which is not clearly forthcoming. But, it is to be borne in mind that the family of P.W.1 and the Accused are totally inimical to each other. When both parties are entangled in such group rivalry, it is quite probable for prosecution witnesses to implicate them in a criminal case.

15. Motive is a double edged weapon for the occurrence and also for false implication. Different motives operate in the mind of the persons in making false accusations. While assessing the evidence in view of the enmity between P.W.1's family and the family of the Accused, the evidence is to be carefully and consciously assessed.

16. We may firstly refer to the previous enmity between the parties. P.W.6 - Chinnathangam, daughter of A.4 - Sukkuru @ Subramaniam was in love and friendship with one Palanisamy of Mayilampalayam. According to P.Ws.3 and 4, P.W1 - Chettan and P.W.6 - Chinnathangam were under love with each other. Whatever be the love and friendship of P.W.6, the definite case is that on the night of 29.07.1996, P.W.6 had left her father's house. She had also taken away the jewels from the house. Since there was no bus, she stayed in the house of relative of P.W.3 - Selvan. P.Ws.1, 3 and 4 had spoken about this happening in Velampalayam Bus Stop.

17. Let us test the evidence of P.W.1 for its reliability. On the occurrence in Velampalayam Bus Stop, P.W.1 has improved his earlier version while in the witness box. In his evidence, he has stated that P.W.6 has stated " ifiag; gpoj;J ,Gj;jjhf rg;jk; nghLntd; ", which he has not stated

in Ex.P.1 - Complaint. Likewise, evidence of P.W.1 is not strengthened by his earlier version in Ex.P.1 - Complaint. Version of P.W.1 is also not strengthened by the evidence of P.Ws.3 and 4 also. As per the evidence of P.Ws.3 and 4, P.W.6 came out of her house for joining with P.W.1, which is entirely different from the version given by P.W.1. According to P.Ws.3 and 4, they were under the impression that P.Ws.1 and 6 were in love with each other. Since P. Ws.1 and 6 could not get the bus, they insisted P.Ws.3 and 4 to get a Taxi for them to immediately get away from the Bus Stop that they might go unnoticed by others. P.W.4 went to bring a Taxi. In the meantime, P.W.3 had taken them to his relative's house in Chetti Goundanpalayam. When P.W.4 came back in the Taxi, he found P.Ws.1 and 6 missing. According to him, he went back in the same Taxi to Ganapathypalayam. On the next day morning in Uppugoundan Thottam, he (P.W.4) was beaten by A.4 and A.5 questioning about P.W.6. The inconsistency between the version of P.W.1 and P.Ws.3 and 4 on the happenings in Velampalayam Bus Stop is irreconcilable. In total contradiction of the version of P.Ws.3 and 4, in Ex.P.1 - Complaint, P.W.1 has stated that he has sent P.Ws.3 and 4 to Goundanpalayam to meet the parents of P.W.6 and he was keeping watch over P.W.6.

18. Serious doubts arise on the case of the prosecution. On the occurrence on 30.07.1996 - 8.00 a.m., A.4 and A.5 had beaten P.Ws.1 and 5. Mother of A.5 had beaten P.W.5 with wooden log on his left shoulder. A.5 herself had beaten P.W.5 on the left shoulder. At that time, P.Ws.1 and 6 were brought to the Thottam and P.W.1 was also attacked by A.2 with Spade Handle (M.O.2); A.3 with Cycle Chain on his back; A.4 with Clutch Wire (M.O.1) on his back and A.5 with Crow Bar on his left knee and left shoulder. That apart, P.W.1 was also abused calling him by his Caste. At that time, the spirit and temper must have been running high between the parties because of the happenings for two days. P.W.1's family would have been enraged over the happenings. It is not as if P.W.1 is a simple rustic man. He is a Tractor Driver and is in the know of things. But, he has neither preferred the complaint on the attack nor admitted immediately in the Hospital for treatment, which throws serious doubts on the prosecution case.

19. P.W.1 was admitted in the Hospital on 10.08.1996. Ex.P.4 - First Information Report was registered in Crime No.217 of 1996 on 10.08.1996 - 9.30 p.m. The inordinate delay of ten days remains unexplained, which gives rise to suspicion on the prosecution case. In view of the delay, Ex.P.4 - First Information Report is bereft of spontaneity. There is every opportunity of coloured version being introduced. The fact that P.W.1 remains silent for ten days despite the attack on him and P.W.5, remains unexplained. The reason that he remained silent out of fear of the Accused is unbelievable. The inordinate delay in registration of the First Information Report puts the Court on guard to seek explanation for the delay. In the light of the delay, the trustworthiness of the prosecution version is to be carefully scrutinised.

20. Actual occurrence. Charge Nos.1, 2 and 4 to 8:- In the backdrop of the enormous delay in the first Information Report and other infirmities, the evidence relating to the occurrence in A.4's field - Uppugoundan Thottam is to be considered. According to P.W.4 - Rangan, when he came back to Ganapathypalayam, A.4 and A.5 came in searching for P.W.6 and he was taken to

the field of A.4, where he was beaten by A.4 and mother of A.5. Within a short while, P.Ws.1 and 6 were brought to Uppugoundan Thottam and P.W.1 was also beaten. There is no mention about the attack of P.W.4 in Ex.P.1 - belated Complaint. If really P.W.4 was beaten by A.4 and mother of A.5, the same would have been definitely mentioned in Ex.P.1. In this background, presence of P.W.4 in A.4's field on 30.07.1996 is to be considered. P.W.4 does not state about the presence of P.W.5 or the attack on P.W.1.

21. P.W.5 - Perumal is the brother of P.W.1 and is said to have witnessed the occurrence. According to P.W.5, on 30.07.1996 - 7.00 a.m., he came to Velampalayam shop for purchase. At that time, A.1 and P.W.4 came in a Car and took him to A.4's field - Uppugoundan Thottam. P.W.5 has further stated that within a short while, P.Ws.1 and 6 were brought to the Thottam and P.W.1 was attacked by all the Accused and P.W.5 is said to have witnessed the occurrence.

22. As stated earlier, P.W.4 has not stated anything about the bringing of P.W.5 to A.4's Thottam nor about the presence of P.W.5 and attack on P.W.1. The occurrence was inside the field of A.4. The circumstance how P.W.5 happened to be there is not properly explained. It is difficult to accept the testimony of P.W.5 as corroborating the version of P.W.1.

23. The attack on P.W.1 in the field of A.4 suffers from several infirmities. From Ex.P.6 - Rough Plan, it is seen that the field of A.4 is surrounded by the lands of other persons - Chinnapaiyan, Karuppannan. Further the field is on the eastern side of the Cart track. But, none of the independent witnesses is examined to prove that P.W.1 was brought to the Thottam and attacked. If really P.W.1 was so subjected to attack, it would not have gone unnoticed by others. In that circumstance, the non-examination of independent witnesses seriously undermines the prosecution case.

24. The learned Sessions Judge has not assessed the evidence of P. W.1 in the light of the inordinate delay and want of corroboration from independent source, but erred in basing the conviction upon the interested version of P.Ws.1 and 5 which suffers from contradictions and infirmities.

25. Charge No.3 - under Sec.3(1)(x) of Scheduled Castes and Schedules Tribes (Prevention of Atrocities) Act. During the course of the attack, A.1 to A.5 are alleged to have called P.W.1 by his Caste with intention to abuse him. For recording conviction under Sec.3(1)(x) of the SC and ST Act, the essential ingredients are ..

(i) intentionally insult or intimidation;
(ii) intention to humiliate a member of Schedule Caste or Schedule Tribe;
(iii) in a place within public view.

The uttering of the words calling by his Caste must be with intention to

insult the member of the Scheduled Caste in the public place. For the sake of arguments, even if we accept the case of the prosecution, the alleged calling of P.W.1 by Caste is only in the course of the attack. Absolutely, no intention to insult P.W.1 is brought out by the evidence on record.

26. Likewise, the essential ingredients that the intentional insult of the member of Scheduled Castes and Scheduled Tribes to be in any place within public view. Admittedly, the case of prosecution is that the attack on P.W.1 was in the field of A.4 - Uppugoundan Thottam. From Ex.P.6 - Rough Plan and Ex.P.5 - Observation Mahazar, it is seen that the scene of occurrence - thrashing Floor (fsk;) is in the field of A.4. North-South Cart Track proceeds on the Western side. Field of A.4 is surrounded by Barbed live fence with gate. The alleged occurrence being inside the field of A.4, cannot be said to be within public view, much less to insult P.W.1 before the eyes of the public. The essential ingredients of Sec.3(1)(x) of SC and ST Act are not proved by the evidence of P.Ws.1 and 5.

27. The learned Sessions Judge has not kept the caution in the mind in assessing the evidence in the light of the delay in lodging the complaint and that P.W.5 is closely related to P.W.1, who is an interested witness. The contradictions on the happenings in Velampalayam Bus Stop were not properly appreciated. The conviction based upon the evidence of P.Ws.1 and 5 on the occurrence suffers from serious error. Evidence of P.W.1 was not tested in the light of the essential ingredients of Sec.3(1)(x) of the SC and ST Act and the conviction under the same cannot be sustained.

28. Yet another vital aspect which vitiates the investigation and the prosecution case is to be pointed out. Under Rule 7 of Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Rules, 1995 (which came into force on 31.03.1995) the offence committed under the Act shall be investigated by the Police Officer not below the rank of Deputy Superintendent of Police. This was also not taken note of by the trial Court.

29. In this case, the investigation was done only by the Inspectors of Police - P.Ws.8 and 9. Considering the seriousness and gravity of the offence arising under the Act, the Officer at higher level is empowered to investigate such offences. The investigation done by the Inspectors of Police vitiates the investigation and also the prosecution case. The Accused are entitled to be acquitted on this ground also.

30. Therefore, the judgment of the Sessions Court, Erode in S.C.No.10 of 1997 (dated 03.04.1997) convicting Appellants / A.1 to 5 for various offences is set aside and this appeal is allowed. Appellants / A.1 to 5 are acquitted of all the charges for which they are convicted. Fine amount paid by them is ordered to be refunded.

Index:yes
Internet: Yes

sbi

To

1.The Principal Sessions Judge and
Special Judge for SC and ST Cases, Erode.

2.The Superintendent,
Central Prison, Coimbatore.

3.The Inspector of Police,
Kunnathur Police Station,
Erode District.

4.The Public Prosecutor,
High Court, Chennai.